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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,782	02/27/2004	Mark C. Carter	EZUP:67823	6131

24201 7590 12/22/2004

FULWIDER PATTON LEE & UTECHT, LLP  
HOWARD HUGHES CENTER  
6060 CENTER DRIVE  
TENTH FLOOR  
LOS ANGELES, CA 90045

EXAMINER
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YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/788,782

**Applicant(s)**

CARTER, MARK C.

**Examiner**

Winnie Yip

**Art Unit**

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 40-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Part II DETAILED ACTION***

This office action is in response to applicant's amendment filed on October 1, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

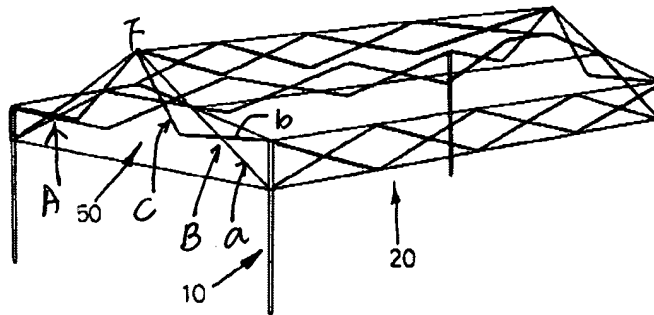
***Claim Rejections - 35 USC § 103***

1. Claims 40-42 stand rejected under 35 U.S.C. 102(e) as being anticipated by Rhee (US Patent No. 6,148,835).

Rhee shows and discloses a canopy shelter comprising, conventional, a plurality of telescoping legs (10), a slider member (31) slidably mounted to each of the legs, an extendible perimeter assembly of link members (20, 50) each including a plurality of pairs of link members (i.e., 51, 52; 20A, 20B) being pivotally connected together in a scissors configuration to form a plurality of sides of the shelter as so to be extendable from a first collapsed position retracted horizontally between pairs of legs to a second extended position extending horizontally between pairs of legs, each pair of link members having first (i.e., 52) and second (i.e., 51) link members. Rhee further teaches, in Fig. 7C, the extendible perimeter assembly at opposing sides (50) of the shelter having a pair of link members (A, B), each pair of link member (A or B) including the first link member (a) having an outer end pivotally connected to the slider member (32) at the upper end of the leg (10), and the second link member formed by two hinged parts (b and c) having an outer end (on outer side of the rod b) pivotally connected to an upper end of the respective leg (10), the second link member (b and c) having a dimension longer than dimension of the first link members (a) such that both inner ends of the second link members are connected at a position (F) extend above the upper ends of the legs to provide a raised portion at each

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opposing side (50) of the shelter to form a gabled configuration when the shelter is fully extended. In Fig. 8, Rhee further shows Further, the connections of the inner ends of link members extend above the upper ends of the legs, and a cover inherently disposed over the legs and the extendible perimeter assembly of the link members.

**FIG. 7C*****Response to Argument***

2. Applicant's arguments, filed October 1, 2004, with respect to rejections under 35 USC 102(e) by Carter '533 have been fully considered and are persuasive. The rejection under 35 102(e) to Carter '533 has been withdrawn.

3. Applicant's argument with respect to rejections under 35 USC 102 (e) by Rhee '835 has been fully considered but it is not deemed to be persuasive.

In response to applicant's argument that the reference to Rhee fails to "both connected inner ends of said pairs of first and second link members extending above the upper ends of the pair of legs" as claimed, it is noted that, as show above EXHIBIT figure 7C and discussion set

forth above rejection, Rhee is considered to show the shelter comprising “one side (50) of the shelter having a pair of link members (A, B), each link member (A or B) including a first link member (a) and the second link member (b and c) pivotally connected one to another, wherein the second link member is formed by considered rods (b and c), both second ends of the first link member (a) and second link member (b and c) are connected together at a point (F) which are considered “both said connected inner ends of said pairs of first and second link members extend above the upper ends of the pair of legs” as claimed. Notice, Applicant does not recite each link member being “a single piece” member. And, applicant only claims “both connected inner ends of said pairs of first and second link members extend above the upper ends of the legs”.

Therefore, whether or not the intermediate connection between the rods (c and b) is located bellow the upper ends of the legs” as argued by applicant does not differentiate the claimed invention over the reference to Rhee satisfying the claimed structural limitations. Further, as show in Fig. 8, the connections of the inner ends of link members extend above the upper ends of the legs. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, the rejection stand ground.

***ACTION IS FINAL***

4. Applicant's amendment necessitated the new grounds of rejection. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. ' 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. ' 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE

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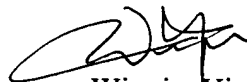
EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. '1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

*Inquiry Contacts*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip  
Primary Examiner  
Art Unit 3637

wsy  
December 17, 2004